

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications
and Energy on its own Motion to Implement the
Requirements of the Federal Communications
Commission's Triennial Review Order Regarding
Switching for Mass Market Customers

D.T.E. 03-60

**AT&T'S COMMENTS IN SUPPORT OF THE LOOP/TRANSPORT
CARRIER COALITION'S MOTION TO STRIKE**

AT&T Communications of New England, Inc. ("AT&T") offers the following comments in support of the Motion to Strike that the Loop/Transport Carrier Coalition¹ ("Coalition") filed in this docket on January 13, 2004.

Relevant Factual Background

In initial and supplemental testimonies filed on November 14 and December 19, 2003, respectively, Verizon Massachusetts ("Verizon") has argued, among other things, that it should be relieved of its obligation as an incumbent local exchange carrier ("ILEC") to provide dedicated transport as an unbundled network element for nearly 200 routes between Verizon wire centers in Massachusetts.² Verizon's argument rests in part on the claim that some of the

¹ The Loop/Transport Carrier Coalition consists of Broadview Networks, Inc., Choice One Communications of Massachusetts, Inc., Focal Communications Corporation of Massachusetts, and XO Massachusetts, Inc.

² In the November 14 testimony, Verizon identified 194 routes on which it should be relieved of its transport obligations. *Initial Panel Testimony of Verizon Massachusetts (Mass Market Switching, Transport, and Loops)* ("IPT"), at 32. In the December 19 testimony, Verizon refined its position, arguing that it should be relieved of its dark fiber transport obligations on 186 routes, its DS3 transport obligations on 185 routes, and its DS1 transport obligations on 174 routes. *Supplemental Panel Testimony of Verizon Massachusetts (Mass Market Switching, Transport, and Loops)* ("SPT"), at 9.

identified routes meet the wholesale trigger for transport described in the Federal Communication Commission’s (“FCC’s”) Triennial Review Order (“TRO”).³

On January 13, 2004, the Coalition filed a motion to strike certain portions of Verizon’s testimony, including those in which Verizon articulates its wholesale transport trigger claim. The Coalition argues that Verizon’s testimony “fails to produce any relevant evidence to support its assertion that the carriers [identified by Verizon as wholesalers] make their own facilities available at wholesale on the routes in issue...” for transport.⁴ The Coalition argues that Verizon has offered only “generalized assertions of wholesale availability” that, because they are merely generalized assertions, “should be stricken from the record.”⁵ In Attachment A to its motion, the Coalition sets forth specific portions of Verizon’s testimony that should be stricken.

On January 14, 2004, the Department directed parties to file written comments in response to the Coalition’s motion by January 30, 2004.⁶

Comments

The “evidence” in Verizon’s testimony purporting to demonstrate that the wholesale transport trigger is met over various routes falls short of the standards articulated in the TRO. Under the TRO, the FCC’s nationwide finding of impairment with regard to certain types of dedicated transport may be overturned, but the finding may be overturned only on the basis of

³ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Federal Communications Commission, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, “Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,” No. FCC 03-36, Released August 21, 2003, ¶¶412-416.

⁴ Coalition, Motion to Strike, at 2.

⁵ *Id.*

⁶ Department, Procedural Memorandum.

“granular” evidence concerning routes that demonstrates the genuine availability of non-ILEC transport facilities.⁷ Verizon’s wholesale transport trigger claim is not supported in its testimony by the requisite granular evidence.

In making this claim, Verizon has presented granular evidence in the sense that it has identified specific routes over which it believes at least two competitive local exchange carriers (“CLECs”) provide wholesale transport. This evidence, however, does not rise to the level necessary for the Department’s consideration: the main difficulty is that Verizon offers no specific evidence to show that any CLEC which it claims to be a wholesale transport provider actually makes transport facilities over specific routes available on a wholesale basis.⁸ Instead, Verizon asks the Department to “rely” on what it calls “evidence of a carrier’s general willingness to offer its transport facilities on a wholesale basis.”⁹

Or, rather, Verizon asks the Department to rely on such generalized evidence “[a]bsent particularized, route-specific evidence to the contrary.”¹⁰ In making such a request, Verizon clearly acknowledges its failure to offer “particularized, route-specific evidence” that the CLECs it identifies actually make transport facilities available at wholesale. Instead of offering the evidence that the TRO requires, Verizon attempts through its testimony to create a rebuttable presumption that wholesale transport (from at least two CLECs) is available over the routes specified in its testimony. This attempt flies in the face of the TRO, which establishes the

⁷ TRO, ¶ 401 (“route-specific basis”).

⁸ There is another difficulty. As the Coalition points out, in identifying the routes on which it wishes to challenge the FCC’s finding of impairment, Verizon has relied on an erroneous assumption, namely, that “two collocations necessarily indicate a transport route.” Motion to Strike, at 5 n.6.

⁹ IPT, at 45.

¹⁰ *Id.*

opposite rebuttable presumption, namely, that impairment exists on a nationwide basis with regard to dedicated transport. The TRO requires route-specific evidence to overcome *this* presumption. Verizon has not offered such evidence.

As the Coalition points out, evidence regarding wholesale transport has been available to Verizon, in the form, for example, of Information Requests 2 and 4 to CLECs from the Department.¹¹ As the Coalition further points out, Verizon “chose to ignore this route-specific evidence, presumably because it severely undermines its efforts to show wholesale availability on any routes.”¹² Had Verizon relied on AT&T’s response to DTE-CLEC-4, for example, this response would indeed have severely undermined Verizon’s wholesale transport claim. Verizon claims that AT&T is a wholesale provider of DS1 and DS3 transport on the vast majority of routes indicated in Attachment 3.F to Verizon’s Supplemental Panel Testimony; indeed, on many of these routes, AT&T is one of only two CLECs alleged by Verizon to provide wholesale transport. But AT&T stated unequivocally that it “does not offer dedicated transport facilities to other carriers connecting to any Verizon wire center in Massachusetts.”¹³ If Verizon had attended to this response, it would have had to reduce its wholesale trigger claims sharply.

AT&T does not cite its response to DTE-CLEC-4 here in order to provide evidence that refutes Verizon’s wholesale transport trigger claim; because Verizon has not offered adequate evidence in support of this claim, AT&T does not believe that any refutation evidence is necessary. Rather, AT&T cites its response in order to illustrate the inadequacy of Verizon’s generalized evidence. Indeed, not only does Verizon’s evidence of a “general willingness” to

¹¹ Motion to Strike, at 6.

¹² *Id.*

¹³ AT&T, Response to DTE-ATT-4.

provide wholesale transport fail to address specific routes; but this evidence, as AT&T's response to DTE-ATT-4 shows, does not even necessarily indicate a general willingness.

Conclusion

For the reasons stated above and in the Coalition's Motion to Strike, AT&T respectfully urges the Department to strike at least the portions of Verizon's testimony concerning wholesale dedicated transport that are identified in Attachment A to the Coalition's Motion to Strike.

Respectfully submitted,

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